

HRG RE: MOTION FOR LEAVE TO
AMEND PROOF OF CLAIM NO. 33

CONT'D STATUS CONFERENCE RE:
CHAPTER 11 CASE

25 Proceedings recorded by electronic sound recording;
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1 CONT'D STATUS CONFERENCE RE:
2 COMPLAINT FOR DECLARATORY
3 RELIEF ALLOWING CLAIM 32 FILED
4 BY BOBS, LLC AS AN UNSECURED
5 CLAIM IN THE AMOUNT OF \$1
6 MILLION

7 CONT'D STATUS CONFERENCE RE:
8 COMPLAINT TO DETERMINE NON-
9 DISCHARGEABILITY OF DEBT

10 TRANSCRIPT OF PROCEEDINGS
11 BEFORE THE HONORABLE NEIL BASON
12 UNITED STATES BANKRUPTCY JUDGE

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1 LOS ANGELES, CALIFORNIA TUESDAY, NOVEMBER 8, 2022 2:00 P.M.

2 ---ooOo---

3 (Call to order of the Court.)

4 THE COURT: This is the matter of Dana Hollister,
5 calendars one through four, and you're all regulars. So,
6 I'll dispense with the usual announcements except to say
7 please wait until I call on you so that we're not all
8 talking at once.

9 All right. Let me start with appearances. For
10 BOBS, Mr. Resnik?

11 MR. RESNIK (via Zoom): Good afternoon, your
12 Honor. Matthew Resnik appearing on behalf of BOBS. Nice to
13 see you.

14 THE COURT: Thank you. You as well.

15 All right. Mr. Rugg?

16 MR. RUGG (via Zoom): Good afternoon, your Honor.
17 Nathan Rugg, Conner Gants, and Janet Shapiro, all appearing
18 on behalf of Paramour Holdings, LLC.

19 THE COURT: Thank you, and welcome.

20 MR. RUGG: Thank you.

21 THE COURT: Mr. Tilem?

22 MR. TILEM (via Zoom): Good afternoon, your Honor.
23 David Tilem for the Debtor.

24 THE COURT: Thank you.

25 Mr. Dailey?

1 MR. DAILEY (via Zoom): Good afternoon, your
2 Honor. Steve Dailey for Select Portfolio Servicing.

3 THE COURT: Thank you.

4 Let's see. Mr. Meshefejian.

5 MR. MESHEFEJIAN (via Zoom): Good afternoon, your
6 Honor. Krikor Meshefejian, Levene, Neale, Yoo and
7 Golubchik, appearing on behalf of the Official Committee of
8 Unsecured Creditors.

9 THE COURT: Thank you.

10 Let's see. Have I missed anyone?

11 (No response.)

12 THE COURT: Okay. All right. So, unless you tell
13 me otherwise, I will assume you've seen the tentative
14 ruling. I -- as noted in the tentative ruling, there are
15 several issues on calendar. The way we had scheduled
16 everything at the last hearing, replies are due orally at
17 the hearing here. So, I didn't want to jump the gun and
18 give you any oral rulings or tentative rulings or written
19 tentative rulings until you have a chance to present your
20 reply on a couple of issues. But if it would help to do
21 things in a different sequence and the parties would like me
22 to give you an oral tentative ruling first, I can do that,
23 and I'm flexible about which order we take things in.

24 So, I think we've got the -- there's the motion to
25 amend proof of claim 33. There are the -- there's the issue

1 about whether the payoff demands for proof of claim 33 and
2 32 are adequate, whether the dollar amounts should be
3 anything different from what's been presented, and -- and
4 then the issue about whether BOBS complied with the
5 scheduling order about the disputed claims reserve in terms
6 of bringing the issue of filing papers to get a decision on
7 that issue and what effect that has on the disputed claims
8 reserve.

9 So, I think those are the main issues. Let me
10 start with you, Mr. Resnik. How would you like to proceed?

11 MR. RESNIK: Your Honor, I'll proceed in any way
12 everybody else feels comfortable. I don't have a lot to say
13 today. I did read the tentative. I appreciate all of the
14 information that went into that tentative and the detail,
15 but I'll leave it to the rest of the parties. However
16 they're comfortable with it, I'm okay with it as well.

17 THE COURT: Thank you.

18 Mr. Rugg?

19 MR. RUGG: Your Honor, I'm happy to take them in
20 whatever order. I guess I'd just ask if we could do it on a
21 pleading-by-pleading basis as opposed to handle all three
22 tentatives and then have responses to all three and then
23 replies, et cetera.

24 THE COURT: Understood. Thank you.

25 Mr. Meshefejian?

1 MR. MESHEFEJIAN: Your Honor, no further comments
2 other than what Mr. Rugg just explained.

3 THE COURT: Okay. Anyone else?

4 (No response.)

5 THE COURT: All right. Why don't I give you at
6 least my oral tentative ruling on the -- well, on the payoff
7 demand issue. I'm hesitating because in a way it kind of
8 spills over into the disputed claims reserve issue, and I'm
9 trying to be mindful of the request to keep things separate.

10 But let me just give you at least some initial
11 thoughts on the payoff demand issue.

12 MR. RUGG: Your Honor, if that complicates things
13 and you'd like to handle them both, I hundred percent defer
14 to you on that one.

15 THE COURT: Okay.

16 MR. RUGG: I don't want to interrupt your -- your
17 logic or your -- or your statements on that. So, please, if
18 that's easier for your Honor, I defer to you a hundred
19 percent.

20 THE COURT: All right. Well, thank you.

21 All of this is, of course, by necessity, done on a
22 somewhat expedited basis. And, so, I don't feel that I've
23 got my thoughts quite as organized as I would like, but let
24 me -- let me just go through what I've got, and then we'll
25 see where we're at.

1 Okay. So, I'm starting with the order confirming
2 the plan. That's docket 1834, and it has in paragraph five
3 on page nine and then continuing on for the next few
4 paragraphs through to page 11, paragraphs five, six, and
5 seven, it deals with treatment of BOBS' secured claims and
6 the treatment of the -- what I have ruled as an unsecured
7 claim and the disputed claims reserve and how to address
8 those things.

9 It includes some language -- this is on the bottom
10 of page nine, top of page ten of that order, that payoff
11 statements will take into account any court orders that
12 reduce the amount of the claim, and then BOBS is given the
13 option to reserve all of its rights by providing more
14 detailed -- a more detailed breakdown.

15 Then that was followed by a scheduling order in
16 the adversary proceeding of what was Hollister v. BOBS and
17 then became the Official Committee of Unsecured Creditors
18 and the Paramour Holdings, LLC entity against BOBS, the
19 adversary proceeding 21-1173, the scheduling order. And in
20 that order, that's the one that says October 12th, 2022 is
21 the deadline for Defendant, BOBS, to file a motion or take
22 such other action as may be necessary and appropriate to
23 address the issue of whether dot dot dot any lien declared
24 upon property owned by Dana Hollister, Debtor and Debtor in
25 Possession, in other words, Debtor, asserted by BOBS, if

1 otherwise valid and enforceable, survives the confirmation
2 of the plan dot dot dot, defined as the right to issue.

3 So, the reference to property owned by Dana
4 Hollister I believe includes her interest in the disputed
5 claims reserve. And, so, to me, the October 12th deadline
6 was for BOBS to file a motion or take such other action as
7 may be necessary and appropriate to address the issue of
8 whether a lien survives on the disputed claims reserve or,
9 for that matter, on the property that's distributed under
10 the plan.

11 I've already ruled in previous hearings, including
12 the confirmation hearing and the hearing on whether to grant
13 stay pending appeal, which was on October 25th, 2022, I've
14 already ruled that in my view under 1141(c) I believe it is,
15 the lien doesn't survive on the property that's distributed
16 under the plan but that the -- the plan in effect is a
17 transfer free and clear with liens attaching to the disputed
18 claims reserve, and the disputed claims reserve was set at
19 the confirmation hearing at \$2 million.

20 Then -- and I explained some of my reasoning
21 behind that in the hearing on whether to grant the stay
22 pending appeal. At the confirmation hearing itself, there
23 was not a whole lot of discussion about the -- the \$2
24 million amount.

25 So, then, skipping ahead now to the Docket 1864,

1 there's an order enforcing order confirming joint Chapter 11
2 plan, and that sets a deadline of November 1 for BOBS to
3 file a payoff statement and supporting declarations
4 detailing the amounts that BOBS asserts should be included
5 in -- in claim number 33 through September 19, 2022, which
6 was my -- the date of my oral order confirming the plan, and
7 that's pursuant to, again, my oral rulings on the October
8 25th hearing.

9 So, that's all by way of background. And then we
10 have the declaration of Mr. Resnick, Docket 1874, and the
11 response from the plan proponents, Docket 1880, on the -- on
12 the payoff demand -- excuse me -- the payoff demand issues.

13 Okay. So, with that backdrop, first, let me note
14 I'm very much aware that there are the pending appeals.
15 And, so, everything that I say is with -- I hope keeping
16 that in mind, including that I can enforce previous orders
17 and -- and they're not stayed. So, I can proceed pursuant
18 to those orders, but I can't vary things that are actually
19 on appeal. As the tentative ruling had indicated with
20 respect to the motion to amend proof of claim 33, I think
21 there's a slightly different issue when we've got an
22 interlocutory appeal, that until the Appellate Court accepts
23 jurisdiction or grants leave to appeal, that I don't think
24 I'm divested of jurisdiction, but I don't know that it makes
25 a difference in this matter because, either way, I think I'm

1 still allowed to proceed because it's enforcing and
2 interpreting the confirmation order and the -- the other
3 orders that I referenced.

4 So, all of this is fairly technical, everything
5 that I've said so far. But I -- I wanted to try to get that
6 all on the record to be sure that we're all on the same page
7 here about what my thinking is at least, and you can address
8 if I've misstated anything or if you think -- if you
9 disagree with any of that and also for the benefit of any
10 Appellate Court, that I'm at least attempting to stick
11 within the bounds of what I'm permitted to do.

12 Okay. So, now we get to -- to Mr. Resnick's
13 declaration. He says that the -- the demand for payout
14 statement "is not consistent with the language of the order
15 confirming plan in this case." I'm reading from Docket
16 1874, page two, lines 10 through 11.

17 I -- I don't think that's right. I think that the
18 confirmation order, it didn't go into any great detail about
19 what should be included in the payout statement, but it did
20 have several paragraphs on that general concept, and -- and
21 my usual experience with payoff demands is that they provide
22 some additional information, not just a flat number. But,
23 be that as it may, in any event, I've issued additional
24 orders, and so now there is just information from BOBS.

25 I was a little confused by some of the material,

1 but I think I understand, and let me lay out what I think I
2 understand and where I think I might disagree.

3 So, I -- I'm looking at Exhibit A to Mr. Resnick's
4 declaration, Docket 1874. And -- and then some of the other
5 exhibits as well. So, there's a payoff demand for claim 32
6 and a payoff demand for claim 33. And then behind that,
7 there are calculations, spreadsheets showing the dollar
8 amounts of interest, monthly accrual of interest and where
9 applicable late fees and where applicable payments. And
10 that's -- there's one spreadsheet for claim -- for what's
11 been included in claim 32 and one that's -- for what's been
12 included in claim 33.

13 And the -- the larger one is for \$13,532,807.50,
14 and that matches the -- the cover of calculations, the
15 demand payoff amounts, and then the -- the other one is for
16 two million four ninety-six -- excuse me. Is that right?
17 Yes, \$2,496,339.46. And, again, that matches.

18 Now, the -- the breakdown is a little different in
19 the spreadsheet from the way it is in the demand statements.
20 In the demand statements, there's a breakdown of interest,
21 default interest, late fees, attorney fees, and then the --
22 the total, the -- the -- the spreadsheet includes the same
23 things but -- no, excuse me. It's not -- it does include
24 the same things. Where I was a little confused was how we
25 got to a dollar amount of \$37,235 for attorney fees

1 attributable to claim 32. But I think that that's shown in
2 the -- an additional exhibit, which is at PDF page 17 of
3 Docket 1874, which is what's referred to as a discount for
4 motions for relief or MFR and a discount for claim number
5 32, and it looks like the discount for claim 32 is what has
6 been included in the -- the dollar amount for -- in that
7 initial Exhibit A breakdown for attorney fees. And it seems
8 as if that's probably the sum of -- if you were to go to PDF
9 page 43 of 46, again, of that Docket 1874, there's a \$30,810
10 amount, and I -- I gather that if you add that plus the
11 miscellaneous items, you get to \$37,235. So, I -- I think
12 that's it, and then also based on -- that's also based on
13 Mr. Resnick's declaration, paragraphs 13 through 17, on
14 pages three to four of Docket 1874.

15 So, it seems to me the -- the \$37,235 is an
16 attempt to focus on things that are specific only to claim
17 32 and -- and not attributable to claim 33. And where I
18 think I disagree a little bit with that is that I would
19 think, in addition to things that are specific to claim 32,
20 there should be an allocation to claim 32 proportional to
21 its -- its share of total debt for all of the attorney fees.
22 And I mentioned this at the hearing on October 25. This
23 came up at one point.

24 So, this is -- there's a transcript of that
25 hearing in Docket 74 of adversary proceeding 21-1173, page

1 45, lines 23 to 24, that I was at this point talking about
2 the fact that most litigations didn't seem to be specific to
3 claim 32, but involved both claim 32 and claim 33. And, so,
4 what I said here is:

5 "From my perspective, the priming
6 lien issue" -- which was one example of
7 the litigation -- "was not principally
8 about priming claim 32. It was
9 principally about priming claim 33, and
10 then there was a little extra from claim
11 32, but that didn't make a difference to
12 the outcome. And, so, it seems to me
13 that the appropriate allocation of
14 attorney fees with respect to that issue
15 is in proportion to the principal dollar
16 amount of the two claims."

17 And that's, again, with all rights reserved for
18 people to argue for something different, but -- but I think
19 that pretty much all of the litigation in this case probably
20 should be allocated in proportion to the principal amount --
21 principal dollar amount of the two claims or maybe the
22 current dollar amount of the two claims or some -- some
23 proportion like that. And then that would be adjusted for
24 things that are dedicated solely to one claim or the other.

25 So, if I'm right in my interpretation of what Mr.

1 Resnick has done, then based on the reasoning I've just
2 described, I would be inclined to make a -- a dollar
3 adjustment, probably something in the \$30,000 range, to the
4 attorney fees that are attributable to claim 32, an upwards
5 adjustment to claim 32 because that would account for its
6 proportional share of the general litigation, and then, in
7 addition, there would be the attorney fees that are listed
8 already here that are attributable to just claim 32.

9 And, so, it's a fairly small dollar amount in the
10 grand scheme of things, but to me that would be the -- the
11 distinction. And that would be my oral tentative ruling
12 about how I would disagree with the payoff statements, that
13 claim 32 it seems to me should probably be increased by some
14 dollar amount, and I -- I had started doing the math, and
15 then I realized I was using some incorrect numbers and --
16 because I hadn't realized quite where the \$37,235 came from.
17 So, anyway, but I think it would be around \$30,000
18 adjustment, upwards to the payoff demand for claim 32 and
19 concurrently a downward adjustment in the same dollar amount
20 to claim 33. Again, not much different in the scheme of
21 things.

22 Along the way to reaching that, I'm not ignoring
23 the fact that there is a -- an objection from the plan
24 proponents that there's hearsay and that -- and other
25 concerns that they've got about some numbers that are -- or

1 some descriptions that are redacted and with it the
2 redaction really should have been there, and a lack of what
3 they see is sufficient detail and so on.

4 But -- but I'm inclined to overrule those
5 objections because the -- most of -- of what's in Mr.
6 Resnick's declaration, when it comes to the calculations,
7 it's very simple math. It's -- there's just a lot of it.
8 But the -- you know, \$80,000 each month on a -- or 12
9 percent interest on an \$8 million claim, it's pretty
10 straightforward. And, you know, adding that up each month
11 and then late fees where appropriate and so on, I don't
12 think you need an expert on that. I don't think it's really
13 a matter of hearsay or not. And when it comes to the
14 attorney fee bills, those might be admissible on -- on
15 exceptions to hearsay, but even if they weren't, there could
16 be some -- an offer of proof, and I -- I don't think we all
17 want to waste time with getting the attorneys in to verify
18 that these are, in fact, their -- their billing statements.
19 But, you know, you can all push back on that if you want.

20 A couple other things. I noted that there are
21 entries -- there are various entries that from what I could
22 tell do relate directly to proof of claim 32, and I didn't
23 go through and add up all of those entries to try to
24 replicate however Mr. Resnick arrived at the -- what was the
25 number, \$37,235? I -- I ball parked it, and it seemed as if

1 that's probably about right in terms of what's allocated
2 specifically to claim 32 if you take the -- the \$30,810
3 that's under the category for Hollister adversary re claim
4 32 as it's described at Docket 1874, part two, pages 39 of
5 46, and 43 of 46.

6 So, there are some -- some tweaks that you could
7 make in either direction, but it seems to me given the
8 record that's been presented before me, there would -- that
9 that's a pretty good estimate. Again, the \$30,000 is kind
10 of a ballpark, and we might need to recalculate that, but
11 that's a pretty decent estimate.

12 The other adjustment that I think needs to be made
13 is, as I mentioned at the hearing on October 25th, 2022, the
14 -- BOBS is going to be getting a dividend as an unsecured
15 creditor under my current ruling and under the plan. And,
16 so, it -- it would be double counting to give it a
17 distribution on that and then also give it a -- a claims
18 reserve on that distribution. And, so, at that hearing, I
19 had told you all that I had done a -- a rough estimate of
20 what that distribution might be, and I had come up with a
21 number of \$296,307.35 as a -- my rough estimate of the
22 distribution that BOBS might get on account of its unsecured
23 claim 32. And, therefore, the disputed claims reserve would
24 only need to be the amount above that that BOBS might be
25 entitled to if it were to be able to prove a -- a secured

1 claim.

2 So, I would adjust the -- the total reserve
3 downwards by that dollar amount, the two ninety-six thousand
4 some dollar amount, and this was described -- again, I'm
5 referring to the transcript, which is Docket 74 in adversary
6 proceeding 21-1173, and it's at page 14, lines 19 to 22,
7 where I -- I mention that I got to a dividend of 21 percent
8 and then what that would result -- result in for possible
9 distribution to BOBS.

10 All of this is a fair amount of calculations by
11 me. I'm only doing this because I didn't see these
12 calculations by the parties, and I -- so, I recognize that
13 you haven't, for example, had a chance to see the
14 spreadsheet that I put together to try to figure out what --
15 whether it would be that 21 percent dividend that I came up
16 with and what the dollar amount of distribution to BOBS
17 would be and what its balance would be that was owed to it
18 and so on.

19 So, I could be off in these figures, you know, but
20 I'm attempting to work with what the record is that's been
21 presented. And, so, that's what I come up with in terms of
22 the -- the payoff demands for claim 32 and claim 33.

23 So, why don't I pause there. That's my oral
24 tentative ruling with regard to the payoff demand. I guess
25 I -- I'll note one other thing. Procedurally, again, for

1 the benefit of any Appellate Court or anyone else looking at
2 this later on, I'm very much aware that this wasn't teed up
3 in such a way that there is a particular motion, and, so, I
4 am taking the -- the papers that were filed pursuant to the
5 scheduling order, enforcing order confirming joint Chapter
6 11 plan. That's -- that order is Docket 1864. I am -- I am
7 taking the parties' briefs as, in effect, motions to -- a
8 motion to enforce the -- the order or to clarify the order
9 or to do whatever else I can do, notwithstanding the appeal,
10 to -- to try to get this nailed down about what the payoff
11 demand should be.

12 And, so, procedurally, it's not as crisp as in
13 retrospect it -- I would have liked it to have been, but I
14 think -- I don't think anyone has been prejudiced by that,
15 and I think that any objection that it should have been by
16 some different process has been either consciously waived or
17 alternatively forfeited by not having been raised earlier.

18 So, I hope that this lets you all know in
19 sufficient detail what my reasoning is and how I think that
20 these demands may need to be adjusted.

21 All right. Mr. Resnick, do you wish to contest
22 that oral tentative ruling?

23 MR. RESNIK: You know, your Honor, I don't. I
24 think it was very well reasoned. I apologize for my
25 involvement of some of the convoluted sequence of events

1 here. I did try to get it all together within a few days,
2 believe it or not. I had a 102 temperature at our last
3 hearing, and I took a couple of days after that to -- to
4 finally reconcile myself. So, I'm feeling better today.

5 You know, as you're talking about this, I -- I
6 have no problem whatsoever, you know, contacting the plan
7 proponents or the Unsecured Creditor Committee to try to
8 reconcile these numbers the way that you're requesting them.
9 Of course, we believe that no matter what, we would have had
10 to defend proof of claim 33 irrespective of proof of claim
11 32 as it pertains to the plan and as it pertains to
12 protecting the rights with the priming motion and -- and the
13 motion for relief and some of the other collateral motions
14 that were in the bankruptcy.

15 At the end of the day, I do understand where the
16 Court's coming to. I do believe that that's probably the
17 simplest if not the fairest approach. The only thing that I
18 would request if we're not going to do a full blown out
19 proof of claim objection based on the attorney fees, which
20 is -- which is probably more detail than we all need to get
21 into, I would just like to reserve the right that if we do
22 somehow miraculously prevail on the merits of the appeal,
23 that we haven't waived any of that -- the rights to those
24 additional attorney fees that were incurred up and to this
25 point.

1 THE COURT: All right. So, I guess I -- I would
2 need to break down the -- the -- that issue. It kind of
3 spills over into the disputed claims reserve issue. I -- I
4 think that at the time I was making my rulings on confirming
5 the plan and when I orally ruled about the dollar amount of
6 the disputed claims reserve, I don't think I had before me
7 calculations of the sort that I now have, and now that I see
8 these calculations, I see that the amount of default
9 interest and -- and regular interest as well but -- and late
10 fees are larger than what I had in mind, and -- and, so,
11 even with the adjustments that I've talked about, we get to
12 a total that is a little over \$2 million.

13 Now, as I -- as I ruled at the hearing on the
14 motion for a stay pending appeal on October 25, 2022, I
15 think that under the confirmation order and under the plan,
16 the -- once the disputed claims reserve is set up, then
17 interest is not accruing at the contract rate but, instead,
18 is accruing at the rate of the interest bearing account.
19 And, so, in terms of Mr. Resnick's statement just now and
20 perhaps request for clarification about reserving all
21 rights, yes, all rights in my view would be reserved to --
22 if BOBS prevails on its appeal, to continue to treat its
23 claim as a secured claim with all of the rights that --
24 inherent to a secured claim up until confirmation and then
25 all the rights that continue to apply after confirmation.

1 But, in my view, that's at a different interest rate post-
2 confirmation. And, so, that would include attorney fees.
3 It would include up until confirmation default interest,
4 regular interest and so on, post-confirmation the reduced
5 rate of interest.

6 But I -- I mention all of that because all of
7 that's what -- in my view, those are the -- the rights that
8 are reserved, but if there's \$2 million set aside and an
9 actual dollar amount is more than \$2 million, then I don't
10 know that a reservation of rights helps, because the -- the
11 -- the ruling as it currently stands is to confirm the plan
12 with a \$2 million claims reserve, not a 2.5 or something
13 else claims reserve.

14 And, so, I -- I don't know that I even have
15 jurisdiction to change the dollar amount, and it may be that
16 that's part and parcel of what was determined at the
17 confirmation hearing, and I don't -- I don't know that it's
18 appropriate to treat today's hearing as a request for
19 reconsideration of that dollar amount or anything else.

20 So, I -- I think that the answer to Mr. Resnick's
21 question or comment is that, yes, all rights are reserved,
22 but I don't know that I can adjust the \$2 million claims
23 reserve at this point. I don't know that that satisfies
24 anyone, but -- but, anyway, that's my attempt to parse
25 things as I see it today.

1 Unless there's something else, Mr. Resnick, let me
2 turn to Mr. Rugg. Mr. Resnick, anything else? No?

3 MR. RESNIK: No.

4 THE COURT: Thank you.

5 Mr. Rugg?

6 MR. RUGG: Thank you, your Honor. And I
7 appreciate the ruling. We won't try to argue some of the
8 points that we raised in our response that you clearly dealt
9 with, and I am happy to work with Mr. Resnick to adjust the
10 amounts consistent with what you stated today.

11 I guess I would only ask for one confirmation
12 which I think goes to one of the issues we raised. I mean,
13 it's not really the hearsay, but it's the issue of fee to a
14 prior counsel. And that was to get some sort of
15 confirmation on the record that those fees were, in fact,
16 paid. Just we'd note that those amounts are at issue. But,
17 beyond that, I think we can -- we can work on the amounts
18 that you asserted should be -- or the -- I guess the
19 calculation to reduce the amount on 32 to 32 based on the
20 total amount of the claims. I think we can figure that out.
21 I don't envision it's going to be in anyone's best interest
22 to, you know, further fight on attorneys' fees given the
23 amounts at issue.

24 I will say that I do recognize in the billing that
25 there was obviously some billing judgment used, and I

1 recognize that, and there were things that there was no
2 charges for, and appreciate. So, I don't -- I don't think
3 it's going to be that fundamental of a fight, and I think we
4 all have bigger issues to resolve to get to closing and get
5 to effective dates.

6 So, the only thing that I -- I guess I would leave
7 out there is just the issue of whether the prior attorneys
8 were, in fact, paid.

9 THE COURT: Okay. Thank you for that.

10 Mr. Resnick, can you clarify that issue if you
11 know?

12 MR. RESNIK: You know, I do know, but who would
13 take my word? But I do know that those -- those statements
14 were made. I guess I could verify that after today's
15 hearing. Give me a day or two to, you know, perhaps get
16 some -- some checks or some confirmation that those -- those
17 payments were made. I don't know much more than that. I
18 certainly didn't pay them myself. So, I'd hate to testify.
19 But I have seen the records, and -- and I certainly have
20 seen the payments. So, I'm comfortable with -- with getting
21 those over to Mr. Rugg.

22 THE COURT: Terrific. Okay. So, then, I can
23 direct the parties to -- to meet and confer about finalizing
24 the payoff dollar amounts. And, as I've said a number of
25 times, all rights are reserved. You don't have to agree

1 with me, any side. But this is -- this is -- these are the
2 dollar amounts that you're calculating would be the dollar
3 amounts under my ruling. And, so, that's the goal here is
4 to get to that dollar amount.

5 Okay.

6 MR. RESNIK: Your Honor, I don't want a surprise,
7 but there were a couple of times where the \$2.4 million was
8 brought up in the omnibus reply and a couple other places
9 replies from us. So, I don't want you to think that we kind
10 of sandbagged the Court by all the sudden sending over a
11 \$2.4 million claim demand. It was something that we thought
12 was apparent from just the pleadings and the paperwork.

13 THE COURT: Thank you. I -- I think that's
14 absolutely right. I do remember the \$2.4 million figure as
15 having been raised before, and but I don't recall seeing any
16 backup for that, and -- and it was based on my ballpark in
17 chambers attempts to kind of figure out the -- the range,
18 and then also at the hearing on October 25, I went through
19 again the -- the analysis that I had done to try to figure
20 out whether \$2 million would be sufficient, and it seemed to
21 me that -- that it would based on the record that was before
22 me then. But, you know, now that I see the -- the figures
23 laid out, I think -- I think that may have been too
24 optimistic of me in terms of how fast interest accrued.

25 Okay. Unless anybody else needs to weigh in, I

1 thought I would turn to the -- an oral tentative ruling on
2 the next issue about whether the disputed claims reserve
3 should be reduced or not.

4 All right. Not hearing anyone want to go into
5 anything further on the previous issue, I'll turn to that.

6 So, give me a sec to get the order. ?Okay. So,
7 I'm looking at Docket 56 in adversary proceeding 21-1173,
8 and this is the September 23 scheduling order that -- in
9 connection with the confirmation of the plan and based on
10 previous discussion on the record and rulings on the record,
11 that -- that the reserve would be \$2 million, that October
12 12, 2022 was the deadline for BOBS to file a motion or take
13 such other action as may be necessary and appropriate to
14 address the issue of whether any lien survives, confirmation
15 of the plan. And, as I've said before, that's a lien item
16 on the disputed claims reserve or on the property of -- that
17 was distributed under the plan.

18 And then, turning over -- that's in paragraph two
19 of that order. And then in paragraph four of that order,
20 there's the ruling that in the event that BOBS fails to file
21 a motion or take such other action as may be necessary and
22 appropriate to obtain a ruling from the Court with respect
23 to the ride through issue by October 12, 2022, Plaintiffs
24 may reduce the amount of the plan reserve to \$315,000
25 without further order of the Court and with the excess

1 balance to be remitted to Paramour Holdings, LLC or its
2 designee.

3 So, the question is whether BOBS sufficiently
4 addressed that. And my oral tentative ruling is that BOBS
5 did not but that I think it's appropriate to consider the
6 papers that have been filed and the proceedings so far to be
7 a request to -- to reconsider whether that really ought to
8 be reduced because I think BOBS went a long way towards
9 complying with -- with that ordering paragraph.

10 So, here's my thinking on that. The -- I think
11 filing a complaint by itself and especially the complaint,
12 as the parties have pointed out, didn't cite any authority
13 about the lien riding through. As a complaint, that's fine
14 because complaints normally don't cite cases and engage in
15 argument, but for that reason, I would have thought it
16 should have -- that the complaint should have been
17 accompanied by a motion and in order to comply with this
18 language of filing papers that may be necessary and
19 appropriate to obtain a ruling from the Court. You're not
20 going to get a ruling just by filing a complaint.

21 So, I -- again, and I -- I got to admit I'm on the
22 fence about this, but I -- I think that on balance, BOBS did
23 not file what it needed to do to -- to really tee this up,
24 and part of the concern all along here has been to try to
25 move things forward sooner rather than later because I

1 think the phrase I used before was that this -- this plan is
2 razor thin. We've got admin claimants already taking a big
3 haircut in order to get any distribution to unsecured
4 creditors. We've got ongoing interest accruing to Dailey's
5 clients and others, including BOBS. And if this is holding
6 up being able to close the deal, there is some prejudice to
7 not getting this teed up and getting a ruling from this
8 Court and then either a stay pending appeal or not and
9 moving things forward.

10 And, so, it seems to me that the -- both the
11 letter of this order and the spirit of this order were that
12 BOBS needed to do more than just file a complaint. That
13 said, it seems to me that it would be a huge hit to reduce
14 the disputed claims reserve down to \$315,000 and that BOBS
15 did -- its papers go through the number of things that it
16 has done and that it may have thought were enough to comply
17 with the scheduling order, and I -- I don't know that it
18 would be -- I'm feeling a little uncomfortable about a
19 reduction -- that great a reduction in a disputed claims
20 reserve when -- when the issue to me is that there may be
21 some wiggle room for interpreting -- there may be some basis
22 to argue that -- that this order is not sufficiently clear
23 and definite about exactly what BOBS needed to file.

24 So, I -- and, in addition, when it comes to
25 reconsideration, if that's what's being asked of me, I think

1 the appellate cases, the Supreme Court on down, have taken
2 an approach of trying not to prejudice lien holders' rights
3 and letting the liens ride through. And the basis for
4 ruling that the plan could be confirmed was to set up a
5 disputed claims reserve in a dollar amount that I thought
6 based on what was before me at the time was sufficient. And
7 now to reduce it down to \$315,000 seems like a pretty
8 drastic result.

9 So, it's messy. I -- I'll certainly concede that,
10 but that's my oral tentative ruling when it comes to the
11 disputed claims reserve dollar amount issue.

12 All right. Mr. Resnick?

13 MR. RESNIK: Thank you, your Honor. Again, thank
14 you for your deliberate response. Perhaps the parties could
15 have helped out a little bit more with this ride through
16 issue or -- or what we call it. I -- you know, when we
17 first got together and sat down and tried to figure this
18 out, we didn't know that we were trying to, for lack of a
19 better word, educate everybody with respect to how the ride
20 through works. We were really looking to how to protect
21 that security interest.

22 And, as a result, it kind of came out the way it
23 did. One amend the proof of claim and one declaratory
24 relief. But we do believe that it would be a drastic
25 sanction to upend that ride through provision until the

1 merits of the claim have been determined.

2 I do believe, and I'm not so certain that it's
3 specific to this, but I do believe that the Court has
4 mentioned adequate protection a couple of times with respect
5 to that claims reserve. The \$2 million or the \$2.4 million,
6 either way you put it, I think was in the Court's mind with
7 protecting that interest until the merits of the claim had
8 been decided.

9 So, I do appreciate, as I said, the deliberate
10 approach that the Court has taken. And, clearly, we would
11 endorse such -- such a result.

12 THE COURT: Thank you. Thank you.

13 Mr. Rugg?

14 MR. RUGG: Your Honor, I hate to do this, but I've
15 done it before. I really had teed up Mr. Gants for this on
16 perhaps more than some of the technical arguments as in our
17 -- as in our response that's on file. I just would note
18 that this is not a new -- what you would do today is nothing
19 new. It's not a sanction. It was something that was
20 specifically contemplated already in the confirmation order.
21 And, so -- so, that's one issue.

22 Two, there's no basis as we sit here today, your
23 Honor, for you to decide that 1141(c) wouldn't apply. That
24 was the premise. 1141(c) applies. It's on its face (Zoom
25 glitch) the statutes. It specifically says what happens

1 when a plan is confirmed, not when an effective date but
2 when a plan is confirmed.

3 So, we have straightforward statutory language
4 which I don't think your Honor considered and provided BOBS
5 a means by which they could convince you that it shouldn't
6 be reduced to 315. What we're talking about now is that
7 they gave it a good effort. They didn't meet it. The
8 letter and spirit was more than just filing a complaint.
9 So, they didn't actually meet the standard.

10 But the most important thing is there's nothing
11 before your Honor for you now to decide the issue. More --
12 or to really reconsider the ruling. That's entirely
13 inappropriate for there to be a reconsideration now now
14 they've done their appeal. And, so, ultimately, those are
15 two major points.

16 And the third is that now we're in a situation
17 where BOBS has taken their appeal, and the plan proponents,
18 specifically my client, is now funding the bond for the
19 appeal as if there was a say, saying, Don't worry. If you
20 lose -- or if -- if you -- if you ultimately win, we're
21 going to reserve money for you just in that case. So, this
22 has done an exact 180 of the way things should be.

23 And I'm sorry to do this to Mr. Gants, but those
24 are just my preliminary comments. If he had anything to
25 add, I would ask the Court to indulge just based on -- on

1 the briefing. Sorry for doing the two for one.

2 THE COURT: Thank you very much.

3 Mr. Gants?

4 MR. GANTS (via Zoom): I think my colleague
5 addressed many of the points I wanted to raise. I think one
6 other point to consider. At the last hearing two weeks ago,
7 Creditor's Committee counsel raised that this complaint has
8 not even been served. There still has been no effort at
9 service for the last two weeks. So, I could understand the
10 perspective of, you know, to the extent there's any lack of
11 clarity, we should do this on the merits and we should have
12 an opportunity to do so. But we're still no closer to
13 actually getting that decision on the ride through issue
14 because it hasn't been placed before the Court.

15 Two weeks ago, BOBS was reminded in front of the
16 Court that service had not even been effected on that
17 adversary complaint. Service still has not even been
18 attempted. So, in terms of giving a party a break when, you
19 know, they made a best effort, I'm not seeing a lot of
20 evidence that your Honor has gotten a good vehicle for
21 resolving this issue through the adversary complaint which
22 remains unserved.

23 THE COURT: All right. I -- I think there's
24 another aspect that ties into all of this, and that is I
25 keep going back to Section 363(e), which says that at any

1 time, even without a hearing, on request of a party for
2 adequate protection, I'm supposed to grant adequate
3 protection. And -- and, so, I -- it seems to me that now
4 that I've seen the dollar amounts and I'm -- and I'm
5 thinking that a \$2 million claims reserve, reducing it to
6 \$315,000 would be very drastic, and -- and Mr. Resnick is
7 asking me to keep it at \$2 million. I -- I'm going to keep
8 it at \$2 million for now, but I -- I do think that we should
9 talk about setting up procedures to -- to get this issue
10 litigated, and that BOBS does need to -- I think Mr. Neale
11 was arguing before. Mr. Rugg has argued before. Mr. Gants
12 has argued before. Mr. Meshefejian's argued before. They
13 -- BOBS keeps mentioning this issue about ride through but
14 not really fully briefing it. And -- and I -- I think I
15 need to set a deadline and -- and give a heads up to BOBS
16 that if they fail to meet that deadline, then there might be
17 some fairly serious consequences to -- to really tee this up
18 and get it briefed.

19 Again, I -- I wish the record were a little bit
20 more crisp on this, but part of the nature of bankruptcy
21 cases, of course, is that you're dealing with things in real
22 time, and we've got investors out there. We've got changes
23 in interest rates happening. I don't know where we are in
24 terms of the closing and getting to an effective date. I
25 know that Mr. Dailey and others are anxious to get their

1 clients paid. And -- and, so, I don't know that if everyone
2 is waiting on an actual ruling in order to be able to close
3 this deal, I mean, the whole point of a disputed claims
4 reserve is to be able to close the deal and -- and continue
5 litigating afterwards. But it might be that one or more
6 parties along the way, from the title insurer to investors
7 to somebody else, is waiting for at least some preliminary
8 steps in that process.

9 So, I -- I do think that at least based on the
10 present record, I've got to set a pretty quick deadline for
11 BOBS to -- to file a brief on this. So, let's -- let's talk
12 about a deadline for that.

13 And, Mr. Resnick, I'm presuming that given BOBS'
14 position that this needs to be done in the context of an
15 adversary proceeding, that this would be a motion filed in
16 the adversary proceeding for partial summary judgment, for
17 complete summary judgment. I don't know what, but some sort
18 of -- so, procedurally, it would be set up to obtain a
19 ruling with respect to the ride through issue. And I need
20 to know from you how quickly you can get that on file.

21 MR. RESNIK: Well, your Honor, I have two appeals
22 that are taking up a little bit of my time. A lot of that
23 obviously merges together. A lot of these arguments are --
24 are one in the same. Our position is it was the Debtors who
25 were supposed to provide in the plan that that lien would be

1 divested upon the unsecured judgment, and I -- and I guess
2 that burden has shifted to us with the confirmation of the
3 plan.

4 So, where we don't believe that the plan was
5 completely clear, we did try to do this declaratory relief.
6 We did try to do this motion to amend the proof of claim.
7 Both of those clearly weren't dispositive of this situation.
8 So, I would ask for a couple of weeks at least for us to
9 file this motion for summary judgment. We do have
10 Thanksgiving and the holidays that are coming up. I do have
11 these two appeals that are coming up, but, you know, I'll
12 burn the wick at both ends if the Court requires us to do
13 that.

14 And I would like to say that the -- the adversary
15 has been served. It's Docket -- Document 3 in the adversary
16 filed October 20 of 2022. I could email them a copy once
17 again, FedEx it to them, but if you look at Docket Number 3,
18 there is a proof of service that they were all served with
19 this complaint. So, I -- I don't want to think anyone
20 didn't see this coming, this adversary. But to answer your
21 full question, I -- I would need at least two or three weeks
22 if I could, just to put some things together and complete
23 the deadlines for -- for some other projects that we have
24 within our small boutique firm here.

25 THE COURT: All right. Thank you. So -- so,

1 then, if I were to adopt that schedule, then that would be
2 -- I'd be reluctant to go out more than two weeks, but if it
3 were two weeks, then that's Tuesday, the 22nd of November.
4 And then I could set deadlines of either two weeks or one
5 week after that for the plan proponents to oppose and then
6 one week after that for a reply and then a hearing after
7 that.

8 So, let me first check with Mr. -- Mr. Rugg first
9 or Mr. Gants, whoever wants to address this. Why don't I
10 start with Mr. Rugg, about what deadline would work for you.
11 Would you want one or two weeks?

12 MR. GANTS: Mr. Rugg, you might be on mute. I
13 suspect he may be saying -- if I can read lips and guess --
14 that on account of the Thanksgiving holiday, two weeks might
15 be appropriate.

16 THE COURT: That sounds right to me. So -- so,
17 let's see. That would take us to December 6 -- no, excuse
18 me. Is it -- yes, December 6, and then a week after that
19 for the reply would get us to December 13.

20 MR. RUGG: Your Honor, may I make a suggestion
21 here?

22 THE COURT: Sure.

23 MR. RUGG: I'm sorry to interrupt. When I was on
24 mute, I was also -- this is the fourth bite at the apple.
25 So, perhaps, you know, a full, you know, brief, response,

1 reply hearing is not necessarily appropriate, and we do have
2 real issues with getting to a closing with the uncertainty
3 with the confirmation order. We've gotten, you know,
4 updated payoff amounts from parties that were different than
5 at the time of plan confirmation hearing. The dollars are
6 going the wrong way. We're all working very hard to get to
7 a closing, but we've now spent time and incurred fees for
8 two different motions, you know, motion for stay, this
9 motion, the adversary. So, we're doing a lot of things
10 outside of the closing. So, I would just ask and suggest
11 that, given this is their fourth attempt to address the
12 issue that was already put forth in the confirmation order,
13 that we maybe cut off a reply and get right to a hearing.

14 THE COURT: Mr. Resnick?

15 MR. RESNIK: Your Honor, since day one in April
16 they proposed a reserve clause. I don't see how that's
17 prejudicial to them to -- to put up the reserve clause and
18 continue with the closing. That was part and parcel of the
19 plan that they were proposing. Unless something's been
20 modified since then as if the \$2 million has to be stricken,
21 I don't see the harm or the prejudice in going forward with
22 what the plan originally proposed.

23 MR. RUGG: May I respond?

24 THE COURT: Go ahead.

25 MR. RUGG: The difference is the claim is now

1 being adjudicated unsecured, and we're being -- and we're
2 being penalized for that and holding a reserve for it.

3 THE COURT: Okay. Well, I -- I think that, in
4 addition to the claim having been adjudicated as unsecured,
5 I do think that, regardless of whether this issue was
6 raised, you know -- it was raised kind of -- it was raised
7 orally at the confirmation hearing, as I recall. And -- and
8 then there was some question at that point about whether I
9 could confirm the plan or not, and we had some discussion
10 about it, and then we've had some subsequent proceedings
11 that we've gone through here trying to tee this up.

12 So, I do think BOBS has not moved as fast as it
13 could have in getting this done, and I'm concerned about
14 that, and I think Mr. Rugg's suggestion is a good one, to --
15 to dispense with a written reply and have a reply orally at
16 the hearing. And what I'm inclined to do is to specially
17 set a hearing for December 13, 2022 starting at 10:00 a.m.
18 unless -- I know in the past we've had some folks on the
19 east coast. So, we could make it in the afternoon instead
20 of the morning or -- or morning instead of the afternoon,
21 whatever would be easier for folks.

22 So, any objection to that? Given -- given that
23 I've already made a ruling to dispense with a written reply,
24 is there any objection to that date, December 13, Tuesday,
25 December 13, at 10:00 a.m.? Let me go around the room. Mr.

1 Rugg?

2 MR. RUGG: Your Honor, that works. Thank you.

3 THE COURT: Okay. Mr. Resnick?

4 MR. RESNIK: That works perfect. Thank you, your
5 Honor.

6 THE COURT: Thank you.

7 Mr. Meshefejian?

8 MR. MESHEFEJIAN: That works, your Honor. Thank
9 you.

10 THE COURT: Okay. Anyone else?

11 (No response.)

12 THE COURT: Okay. All right. So, I think beyond
13 that, we've got the -- the written tentative ruling that I
14 posted about the motion to amend proof of claim 33, and I --
15 I think Mr. Resnick had already noted there's not a lot to
16 be said maybe on that. And then there's the continuance of
17 the status conference or conferences in both the case -- the
18 bankruptcy case itself and the adversary proceedings.

19 And the tentative ruling was to continue to
20 December 6th at 2:00 p.m. Frankly, I've forgotten whether
21 there's anything else on for that time or, if not, then
22 maybe a continuance to the same Tuesday, the 13th of
23 December would -- would make sense. Let me just take a
24 quick look and see if there's anything in this case on for
25 December 6th, and then I'll come back and see if there are

1 any other issues that we need to address today.

2 MR. MESHEFEJIAN: Your Honor, this is Krikor
3 Meshefejian. I believe there's a fee app hearing scheduled
4 for December 6th at 1:00 p.m. But I think it's appropriate
5 to continue the status conferences to December 13th because
6 that fee app hearing, first, it's scheduled at 1:00 p.m.,
7 doesn't really involve any of these issues that we've
8 discussed today. So, I would think it would be appropriate
9 to have the status conferences just go to December 13th at
10 2:00 p.m., unless your Honor's procedures and preference is
11 different than that, of course.

12 THE COURT: Thank you. I do like to have status
13 conferences any time I have anything else going on, so that
14 -- in the bankruptcy case. But I don't know -- I don't need
15 to -- to have a status conference in the adversary
16 proceedings at that time I don't think. So, why don't I
17 continue -- I'm just getting back to my notes here. So,
18 I'll continue the status conference in the bankruptcy case
19 to December 6th at 2:00 -- or was that 1:00 or 2:00? I've
20 forgotten now.

21 MR. MESHEFEJIAN: It's -- the fee application
22 hearings are scheduled for 1:00 o'clock.

23 THE COURT: That -- okay. That sounds right. And
24 then -- but I will continue the -- the adversary proceeding
25 status conferences to December 13th at 10:00, which will

1 also be set as the hearing on this motion to be filed and
2 served by BOBS on November 22nd, the motion for summary
3 judgment on the ride through issue.

4 And then I think I need to -- on the payoff demand
5 amounts, I'm directing the parties to meet and confer, and
6 you've already indicated that you -- you can probably work
7 things out based on what my rulings have been, and it's
8 probably not worth arguing about the -- some of the other
9 stuff, the details. But I think I'll continue that as well
10 just in case there's any last issues that need court
11 involvement. So, that's also to December 18th -- excuse me
12 -- 13th, at 10:00.

13 And then when it comes to the issue of the
14 disputed claims reserve, I've given you my ruling on that,
15 and why don't I direct Mr. Resnick to prepare the order on
16 that. But, of course, run it past the plan proponent. And
17 that -- I think it should just be a simple for the reasons
18 stated on the record that the -- the claims reserve is
19 maintained at \$2 million, that the dollar amount of the
20 claims reserve is maintained at \$2 million.

21 MR. RUGG: And is that -- your Honor, is that
22 subject then to the adversary, because I don't -- now we're
23 kind of cross paths on the different proceedings. I just
24 want to make sure that that doesn't cut off what we're then
25 going to brief and have presented.

1 THE COURT: Yes, correct. So, the -- that's
2 subject to any future ruling that I might make in the
3 adversary proceeding about whether the lien does or does not
4 ride through.

5 I will say that because the \$2 million claims
6 reserve was part and parcel of the confirmation proceeding,
7 I'm a little uncertain whether I still have authority to --
8 to change that dollar amount because there is an appeal from
9 the adversary -- from the confirmation order. So, maybe
10 that deprives me of the authority to adjust that since it
11 was part of that proceeding, but I -- I don't know that
12 that's an issue we have to deal with today. And, in any
13 event, I -- I guess -- well, yeah, I don't think that's an
14 issue that we need to deal with today.

15 MR. RUGG: I'm sorry, your Honor. You mean you
16 can't adjust it up?

17 THE COURT: I -- I don't know that I can adjust it
18 up or down. The --

19 MR. RUGG: So that -- the ability to do so was
20 specifically in the confirmation order. And then if we're
21 not -- I understood that's what we were going to be, again,
22 briefing, that if -- if they couldn't show the ride through
23 applied, then there could be the adjustment down.

24 THE COURT: Well, that's a point. So -- so, I
25 guess then --

1 MR. RUGG: It's in paragraph seven of the
2 confirmation order.

3 THE COURT: Yes. So, paragraph seven does
4 contemplate a -- a possible reduction, it's true. And I
5 think what I'm doing today is, in effect, modifying the
6 scheduling order, and I think that that's probably all
7 consistent with retaining jurisdiction even for matters that
8 are on appeal to enforce and interpret my -- and act within
9 the discretion that's already set forth in the unstayed
10 confirmation order.

11 So, my -- I -- I think that now that Mr. Rugg has
12 pointed this out, that I can still probably adjust the --
13 the \$2 million -- in the event that I were to rule that no
14 lien attaches to the disputed claims reserve, then the --
15 then the funds could be released, again, if there's no stay
16 pending appeal.

17 Okay. So, I think -- I think that's it. Let me
18 just recap. So, I'm denying BOBS' motion to amend claim 33,
19 and the proponent should lodge a proposed order on that and
20 attach a copy of the written tentative ruling that I posted
21 prior to today's hearing.

22 I'm continuing the status conference in the
23 bankruptcy case to December 6th at 1:00 o'clock, concurrent
24 with the fee application.

25 I am continuing the -- what I'm treating as a -- a

1 motion in a contested matter involving the dollar --
2 appropriate dollar amounts of the payoff demand. I'm
3 continuing that to December 13 at 10:00 a.m. But, in the
4 meantime, I'm directing the parties to meet and confer, and
5 I suspect that they'll be able to figure out dollar amounts
6 for both proof of claim 32 and proof of claim 33 so that
7 it's teed up for any escrow agent to know what dollar amount
8 needs to be paid and for the plan proponents to figure out
9 what needs to be put in a claims reserve.

10 And then I'm continuing the adversary proceeding
11 status conferences in both the -- both of the ones that are
12 on for today to December 13, 2022 at 10:00 a.m. And I am at
13 present denying the, again, what I'm treating as a motion,
14 the contested matter of reducing the disputed claims
15 reserve, that it's without prejudice to a possible reduction
16 in the future if I were to rule in the plan proponent's
17 favor in connection with the upcoming motion for summary
18 judgment in the adversary proceeding that BOBS has most
19 recently commenced. But I am -- for the present purposes, I
20 am denying the request to reduce the disputed claims reserve
21 from \$2 million to \$315,000, and Mr. Resnick is directed to
22 lodge a proposed order on that, for the reasons stated on
23 the record, and circulate it to Mr. Rugg and Mr. Meshefesian
24 or -- well, to the plan proponents before you lodge it.
25 And, as always, if there's any objection to the form of

1 order, contact chambers right away.

2 And then I'm, as a scheduling matter, setting the
3 schedule for BOBS' motion for summary judgment on the ride
4 through issue in that adversary proceeding, and that would
5 be November 22nd deadline for BOBS to file and serve its
6 motion for summary judgment on that ride through issue.
7 December 6 for the plan proponent's opposition, and December
8 13 at 10:00 a.m. for the hearing specially set on that.

9 I think that's everything. Let me go around the
10 room and see if there's anything else.

11 Mr. Resnick?

12 MR. RESNIK: Thank you, your Honor. I really do
13 believe that you used a very flexible and pragmatic approach
14 to everything, and I can only throw myself on the dagger and
15 say I appreciate everything that you've done here with
16 respect to the four corners of the orders here.

17 I did want to say a couple of things about the
18 motion amend the claim 33 -- I mean 30 -- yeah, 33. You
19 know, I -- I'd hate to waste the Court's time any
20 additional. I don't know if there's anything I can say that
21 would change the Court's mind other than that claim has
22 always looked to the lien for satisfaction. It's clearly an
23 allowed secured claim. The future advance comes from that
24 generic deed of trust. So, the origin of the debt remains
25 the same as the other loan modifications and loans.

1 Obviously, the Court found under 1122 that there
2 was a commonality with those claims as they were class two
3 claimants, and we never saw any prejudice here because, as
4 I've stated a couple of minutes ago, since the initiation of
5 the plan back in April or May, they've always reserved the
6 \$2 million and change and that there would be no problem
7 with accommodating that amount. That was pretty affirmative
8 by the plan proponents and the Unsecured Creditor's
9 Committee.

10 Lastly, we do believe that the disallowance of the
11 claim didn't necessarily inhibit our right under 1141 since
12 506(d) -- 1141 must apply outside of that 506(d) context.
13 Now, knowing that, I guess I'll put that in my motion for
14 summary judgment and some of the other details, but I did
15 want to get on the record that there was -- it certainly
16 wasn't in bad faith filing the motion to amend the proof of
17 claim 33 and that there was some relation to the note in the
18 deed of trust, more so than you would find in a completely
19 different interest or a completely different property. So,
20 I just wanted to -- to relay that. I do know that the Court
21 was concerned maybe a little bit with bad faith or the Court
22 was concerned that maybe we were trying to circumvent the
23 appellate process, but we certainly weren't, and I just
24 wanted to clarify those points.

25 THE COURT: Thank you, Mr. Resnik.

1 I -- I -- I'm going to stick with the tentative
2 ruling on that. So, I -- I will deny the -- the motion, and
3 the plan proponent should lodge a proposed order on that,
4 but I -- I didn't mean to cut you off there, Mr. Resnik. I
5 jumped the gun.

6 All right. Anything else for today? Mr. Rugg?

7 MR. RUGG: No, your Honor. I don't think so.
8 And, with no disrespect to Mr. Meshefejian, I don't think
9 we'll really know if there's anything else without Mr. Neale
10 here to tell us what we've missed procedurally, but we can
11 all do a group effort. I'm not aware of anything, your
12 Honor.

13 THE COURT: Okay. All right.

14 Mr. Meshefejian?

15 MR. MESHEFEJIAN: No further comments.

16 THE COURT: Okay. Thank you.

17 Mr. Tilem?

18 MR. TILEM: No, your Honor. That's -- that's
19 fine, although there will be -- I just want to note there
20 will be probably more than one fee application scheduled for
21 the hearing on the 6th, and we'll be planning to file one as
22 well, and there are a total of four potential applicants,
23 Levene, Neale, my firm, the accountants, and the special
24 family tax law counsel, those four.

25 THE COURT: Thank you for the heads up.

1 Mr. Gants?

2 MR. RUGG: Nothing, your Honor.

3 THE COURT: All right. Thank you.

4 And Mr. Dailey?

5 MR. DAILEY: Nothing from me, your Honor.

6 THE COURT: Okay. All right. Thank you all.

7 That concludes the hearing, and we are off the
8 record.

9 (Proceedings concluded.)

10

11 I certify that the foregoing is a correct
12 transcript from the electronic sound recording of the
13 proceedings in the above-entitled matter.

14

15 /s/Jordan Keilty 12/16/22

16 Transcriber

Date

17

18 FEDERALLY CERTIFIED TRANSCRIPT AUTHENTICATED BY:

19 /s/L.L. Francisco

20 L. L. Francisco, President
Echo Reporting, Inc.

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